IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14452 of 2004

Date of Decision: 06-07-2005

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PATEL NANJIBHAI HIRABHAI - Petitioner(s)
Versus
UNION OF INDIA &4 - Respondent(s)

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(See Next Page for Full Title)

Coram:
The Hon'ble Mr. Justice Bhawani Singh, Chief Justice
The Hon'ble Mr. Justice H.K. Rathod, Judge
Whether approved for Reporting?
For Petitioner:
MR GIRISH K PATEL
For Respondents:
MRS VASAVDATTA BHATT
Standing Counsel for the Central Government

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1 Through this petition, petitioner seeks annulment of order dated 27.01.2001 forfeiting the pensionary benefits of the petitioner declaring him deserter, with direction to respondents to grant service pension from the date of

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Whether Reporters of Local Papers may be allowed to see the Judgment?

discharge from December 1, 1999 and other benefits available to him. Respondents submit that petitioner was prematurely discharged from service on 29.06.2002 under Section 38(1) of the Army Act, 1950 (for short `the Act'). Therefore, as per paragraph-113(a) of the Pension Regulations for the Army, 1961 (Part-I), he is ineligible for pension or gratuity in respect of his previous service. Petitioner was declared a deserter for remaining absent and pension order recalled by order dated 11.10.2001. Prayer for quashing the order recalling the pension does not survive after his dismissal following court martial proceedings.

2 Petitioner alleges that he was not called to face the charge by the court martial. He was called to report to EME Depot Bn, Secundrabad vide letter no. 23201/Est/FW dated 16-05-2002. Accordingly, he reported to EME Depot Bn on 17.06.2002, filed papers for final clearance, army group insurance, provident fund, etc. On 29.06.2002, at about 13.00 hours he was called by Colonel Arun Tully in his office and asked to give statement about absence from 15.10.1999 to 17.06.2002 to Major, which he did in Hindi. Petitioner submitted death certificate of his brother, letters written by him, entry passes, dates of reporting to unit and Record office, copy of F.I.R. for loss of bag while going to EME Record office. After about 15 months petitioner was asked to go. Neither the prosecution led evidence nor recorded statements of witnesses given to him and opportunity of hearing was not given to him and order of dismissal was not passed. He is waiting for pension payment, but did not receive any reply from the respondents. Therefore, legal notice dated 25.08.2004 was issued for release of pension.

3 We do not propose to call for and examine the records of petitioner's service including court martial proceedings at this stage, in view of the alternative efficacious remedy available to him, pointed out in paragraph 20 of the affidavit in reply by the respondents. It reads:

4 Therefore, in the circumstances aforesaid, we are of the considered opinion that efficacious alternative remedy is available to the petitioner under Section 164 of The Army Act, 1950. Consequently, petition is disposed of with the following directions:

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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